

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY AND SURETY COMPANY
as Administrator for RELIANCE INSURANCE COMPANY,

Plaintiff,

vs.

Case No. 07-CV-6915 (DLC)
ECF CASE

DORMITORY AUTHORITY – STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants.

DORMITORY AUTHORITY – STATE OF NEW YORK, et. al,

AFFIDAVIT

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

TRATAROS CONSTRUCTION, INC., et. al,

Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE COMPANY; et. al,

Fourth-Party Defendants.

STATE OF NEW YORK)
 :ss.:
COUNTY OF NEW YORK)

S. DWIGHT STEPHENS, being duly sworn, deposes and says:

1. I am a member of Melito & Adolfsen P.C., counsel for Fourth-Party Defendant Zurich American Insurance Company (“Zurich”). This affidavit is submitted in support of Zurich’s motion for summary judgment pursuant to Federal Rule of Civil Procedure (“FRCP”) 56.

2. This affidavit also is submitted in support of Zurich’s motion herein requesting that the Court add Zurich’s sister company, Assurance Company of America (“Assurance”), as a fourth-party

defendant, pursuant to Federal Rule of Civil Procedure (“FRCP”) 21. Fourth-Party Plaintiffs Travelers Casualty and Surety Company (“Travelers”) and Trataros Construction, Inc. (“Trataros”) are seeking insurance coverage under a liability policy that Zurich issued to Trataros.

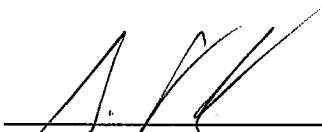
3. Travelers and Trataros also are seeking coverage from Zurich, in part, on the ground that Trataros is an additional insured under a liability policy that Assurance issued to Fourth-Party Defendant Bartec Industries, Inc. (“Bartec”). Travelers did not include Assurance as a fourth-party defendant in this action despite the fact that Zurich alerted Travelers to the omission in its answer to the Fourth-Party Complaint and Zurich also produced the liability policy issued by Assurance to Bartec in discovery in the prior action. Zurich opted not to make a motion to dismiss the claims concerning the Bartec Policy on this technical ground so as not to make an already complicated action unnecessarily more complicated. Instead, it is in all parties’ interests to have the claim for coverage under the Assurance Policy issued to Bartec resolved on this motion.

4. FRCP 21 provides, in part, that “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party.” In order to accomplish complete relief among the parties and in the interests of judicial economy, Zurich requests that this Court issue an order adding Assurance as a fourth-party defendant pursuant to FRCP 21.

5. Zurich also submits this affidavit in support of the motion for summary judgment, pursuant to FRCP 56, on behalf of Zurich and Assurance seeking a declaration that Travelers and Trataros are not entitled to liability insurance coverage under the liability policies Zurich issued to Trataros and Assurance issued to Bartec on the ground that Travelers and Trataros breached the notice conditions in the applicable policies. In further support of the motion by Zurich and Assurance herein, attached hereto are true and correct copies of the following exhibits, which are documents that have been


produced in this action and/or the prior related action between the parties, or pleadings that have been filed with the court:

- Exhibit A February 28, 2001 letter from TDX Construction Corp. (“TDX”) to Trataros Construction, Inc. (“Trataros”).
- Exhibit B March 7, 2003 letter from TDX to Trataros and Testwell Laboratories, Inc. Preliminary Investigation Report.
- Exhibit C June 17, 2003 letter from TDX to Dormitory Authority State of New York (“DASNY”).
- Exhibit D August 28, 2003 letter from TDX to Trataros.
- Exhibit E *Travelers Cas. & Sur. Co. v. DASNY, et al.* Complaint (04 CV 5101 (HB)).
- Exhibit F *Travelers v. DASNY* Third-Party Complaint *DASNY v. Trataros et al.*
- Exhibit G *Travelers v. DASNY* Amended Fourth-Party Complaint.
- Exhibit H *Travelers v. DASNY* Affidavit of Service on Zurich sworn to March 2, 2005.
- Exhibit I Zurich Answer to *Travelers v. DASNY* Amended Fourth-Party Complaint.
- Exhibit J *Travelers v. DASNY* Fourth-Party Summons and Complaint (07 CV 6915 (DLC)).
- Exhibit K Zurich Answer to *Travelers v. DASNY* Fourth-Party Complaint.
- Exhibit L Zurich general liability policy issued to Trataros, effective April 1, 2001 to April 1, 2002 (No.: GLO 3504358-00).
- Exhibit M Bartec Industries, Inc. (“Bartec”) Proposal dated May 8, 2000 and Purchase Order 16780 issued to Trataros, dated May 12, 2000, and signed by Bartec and Trataros on June 10, 2000 and June 28, 2000 respectively.
- Exhibit N Portions of Assurance Company of America (“Assurance”) Precision Portfolio Policy issued to Bartec, effective May 26, 2000 to May 25, 2001 (No.: CFP 26465766).
- Exhibit O Opinion and Order of Hon. Denise Cote in *Travelers v. DASNY* (07 CV 6915 (DLC)) on United States Fire Insurance Company’s motion for summary judgment.



S. Dwight Stephens

Sworn to before me this
6th day of August, 2008



Notary Public

67374

MELINA L. EL
Notary Public, State of New York
No. 01EL6188440
Qualified in New York County
Commission Expires 06/09/2012